

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9044 OF 2021

M/s Bharat Tea Suppliers
H.No. 75, Walkeshwar Road
Post – Shahagad, Tal - Ambad
Dist. Jalna – 431212
(through Shaikh Mukhtar Shaikh Bashir
Proprietor M/s. Bharat Tea Suppliers)

... PETITIONER

VERSUS

1. M/s. Gujrat Tea Traders
2nd Floor, Bhaishree Chambers
Veer Sawarkar Chawk
Singhi Bazar
Jalna – 431203

2. The Registrar of Copyrights
Copyright Office
Boudhik Sampada Bhavan
Plot No.32, Sector 14, Dwarka
New Delhi-110078.

... RESPONDENTS

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Advocate for Petitioner : Mr. Shriniwas A. Kulkarni
Advocate for respondent No.1 : Mr. Shreyas Deshpande h/f. Mr. S.B.
Deshpande
ASGI for Respondent No.2 : Mr. A.G. Talhar

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CORAM : MANGESH S. PATIL, J.
Reserved on : 21.10.2021
Pronounced on : 28.10.2021

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned advocate Mr. Shreyas Deshpande holding for Mr. S.B. Deshpande waives service for respondent No.1. The learned ASGI Mr. Talhar waives service for respondent No.2. At the the request of the parties, the matter is

heard finally at the stage of admission.

2. The petitioner is invoking the powers of this Court under Article 226 and 227 of the Constitution of India for impugning the judgment and order passed by Intellectual Properties Appellate Board, Chennai (herein after IPAB) in the matter of TP/26/2020/CR/WZ dated 31.12.2020.

3. The petitioner applied for and obtained a copyright of the package design for the name “Tiger No.5” and received a certificate of registration dated 18.11.2009 having No.A-87508/2009 in the name of M/s. Bharat Tea Suppliers of which the petitioner is the proprietor under Class 30 of the Copyright Act, 1957. The respondent No.1 also registered a copy right design under the name “Lion No.5” with registration No.A-88737/2010 on 30.08.2010. The respondent No.1 then filed a petition for rectification of the Copyright Register under Section 50 of the Copyright Act for expunging registration of the petitioner’s copyright by preferring the Appeal before the IPAB. By the impugned order the IPAB allowed the Appeal on the ground that the respondent No.1 was an aggrieved person and registration was obtained by the petitioner without compliance with the mandatory provision contained in Rule 16(3) of the Copyright Rules, 1958 (which is analogous to Rule 70(9) of the Copyright Rules, 2013).

4. The learned advocate for the petitioner submitted that the IPAB had not extended opportunity of being heard to it and passed the judgment which is *ex parte*. Petitioner’s request for adjournment was not considered and since the principles of natural justice have not been followed the

impugned judgment is null and void.

5. The learned advocate further submitted that the petitioner's copyright was registered first in point of time and there was no occasion or reason for it to know interest of the respondent No.1 so that Rule 16 (3) could have been complied with. The petition under Section 50 was preferred beyond the limitation period of 90 days. The learned advocate would also submit that the fact that the petitioner was acquitted of the charges for infringement of the copyright on a FIR lodged by the respondent No.1 in the year 2017 and the fact was not brought to the notice of the IPAB while it passed the impugned order. All these facts and circumstances were clearly overlooked by the IPAB. Besides being an order passed *ex parte* against the petitioner, it also suffers from the above vices and may be quashed and set aside.

6. The learned advocate for the respondent No.1 Mr. Deshpande referring to his affidavit-in-reply submits that it was a clear case demonstrating that the petitioner had obtained the copyright without compliance with the provisions of Rule 16(3) of the Rules. The respondent No.1 has been using the artistic work "Lion No.5" since the year 1976. The petitioner was aware about it. The respondent No.1 had even filed Regular Civil Suit No.3/2009 for trade mark and copyright infringement and passing off suit against the petitioner. The suit was decreed and the First Appeal No.2855/2013 preferred by the petitioner was also dismissed by this Court. This was sufficient to demonstrate that the petitioner was aware that the

respondent No.1 was a person having interest in the subject matter of the copyright and therefore by virtue of Rule 16(3) it was imperative for the petitioner to have served a notice to the respondent No.1 before applying for registration of the copyright. Apart from noncompliance of such a mandatory provision, the petitioner succeeded in obtaining registration behind the back of the respondent No.1. The fact that the respondent No.2 got the artistic work registered at later point of time is inconsequential and the IPAB has rightly considered this aspect while allowing the respondent No.1^s Application.

7. The learned advocate Mr. Deshpande would then submit that the principles of natural justice were duly followed by the IPAB while passing the impugned order. The petitioner was extended an opportunity to tender his written statement and it was duly considered. No prejudice has been caused to the petitioner merely because opportunity of being heard physically was not extended to it. He would place reliance on the judgment of the Supreme Court in the Case of **Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise and Ors.; (2015) 8 SCC 519**. Facts and circumstances of the matter in hand are clearly covered by the exceptions carved out in this decision. Acquittal of the petitioner of the charge is inconsequential for deciding validity of registration of its copyright.

8. Lastly, the learned advocate Mr. Kulkarni would submit that by virtue of Tribunal Reforms Ordinance of 2021 the IPAB has been abolished. The jurisdiction now vests with this Court under Section 50 of the Act and

even for this reason the Writ Petition is not maintainable.

9. I have carefully considered the rival submissions and perused the papers.

10. To begin with the aspect of maintainability of the Writ Petition, true it is that with the promulgation of Tribunals Reforms (Rationalization and Conditions of Service) Ordinance, 2021, so far as the provisions of Copyright Act, 1957 are concerned, the IPAB has been replaced by words “High Court” in Section 50 and thenceforth that is since the date of promulgation of this ordinance a proceeding under Section 50 would lie before the High Court. But then, suffice for the purpose to observe that the impugned order was passed by IPAB prior to the coming into force of this ordinance and the only remedy available to the petitioner to challenge its order would be High Court. Therefore, the submission of the learned advocate for the respondent No.1 that no purpose would be served by entertaining this Writ Petition is clearly erroneous.

11. Now coming to the dispute in the matter in hand, it is a matter of record and there is no dispute about the fact that the petitioner applied for and obtained a copyright for using the label “Tiger No.5” and artistic work in the label with the registration certificate which was obtained prior to the registration of a similar copyright by the respondent No.1 with the name “Lion No.5”. However, there is no dispute about the fact, rather it is a stand of the petitioner that he has been acquitted of the charge for infringement of the self same copyright from an offence registered at the

instance of the respondent No.1. He has also placed on record a copy of the judgment of the concerned Magistrate in Regular Criminal Case No.352/2008 dated 23.11.2017. However, as can be seen, the FIR was registered way back in the year 2007, precisely on 28.10.2007 (Exhibit-R7) that is even before the petitioner applied for registration. Irrespective of the fact that he has subsequently been acquitted, the circumstance clearly indicates that the petitioner was aware about the interest of the respondent No.1.

12. If this was the case, there is absolutely no material to demonstrates that the petitioner made any attempt to comply with the mandatory requirement of serving a notice to the person having interest as is contemplated under Rule 16(3) of the Copyright Rules, 1958 which is analogous to Rule 70(9) of the Copyright Rules, 2013 which reads thus :

“70 (9) : The person applying for registration shall give notice of his application to every person who claims or has any interest in the subject matter of the copyright or disputes the rights of the applicant to it.”

13. There cannot be any debate that the provision is mandatory one. As the petitioner had not made compliance with this mandatory requirement of the Rule 16 (3) while applying for registration, it is certainly a ground which in itself is sufficient to expunge the entry of the petitioner’s registration. This is what has been precisely considered by the IPAB in the impugned order.

14. It is in view of such peculiar state of affairs when it is not even

the case of the petitioner to have made any compliance with the provision of Rule 16(3) of the Copyright Rules, it was a clear case which would fit in the first exception recognized in the case of **Dharampal Satyapal Ltd.**(supra) where the argument of fair hearing would not be sufficient to quash and set aside the impugned order. Again, even no prejudice can be said to have been caused to the petitioner in the absence of any opportunity of being heard having been extended to it in person. The impugned order clearly demonstrates that its stand was duly considered by the IPAB and it has allowed the application of the respondent for the sole reason of noncompliance of Rule 16(3) about which factually there is no dispute.

15. Suffice for the purpose to bear in mind the following proposition from the case of **Dharampal Satyapal Ltd.** (supra) :

*“31. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason – perhaps because the evidence against the individual is thought to be utterly compelling – it is felt that a fair hearing 'would make no difference' – meaning that a hearing would not change the ultimate conclusion reached by the decision-maker – then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in **Malloch v. Aberdeen Corporation** (1971) 1 WLR 1578 AT 1595, who said that a 'breach of procedure...cannot give (rise to) a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court dos not act in vain'. Relying on these comments, Brandon LJ opined in **Cinnamond v. British Airports Authority** MANU/UKWA/0013/1980 : (1980) 1 WLR 582 AT 593 that 'no one can complain of not*

being given an opportunity to make representations if such an opportunity would have availed him nothing'. In such situations, fair procedures appear to serve no purpose since 'right' result can be secured without according such treatment to the individual. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the Courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that order passed is always null and void. The validity of the order has to be decided on the touchstone of 'prejudice'. The ultimate test is always the same, viz., the test of prejudice or the test of fair hearing."

It is a clear case which fits in both the exceptions carved out by the Supreme Court.

16. In view of the above state of affairs, there is no merit in the Writ Petition. The Writ Petition is dismissed. No order as to costs.

(MANGESH S. PATIL, J.)

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